

U.S. Patent and Trademark Office, Commerce

§ 11.105

effort to determine the validity, scope, meaning or application of the law.

§ 11.103 Diligence.

A practitioner shall act with reasonable diligence and promptness in representing a client.

§ 11.104 Communication.

(a) A practitioner shall:

(1) Promptly inform the client of any decision or circumstance with respect to which the client's informed consent is required by the USPTO Rules of Professional Conduct;

(2) Reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) Keep the client reasonably informed about the status of the matter;

(4) Promptly comply with reasonable requests for information from the client; and

(5) Consult with the client about any relevant limitation on the practitioner's conduct when the practitioner knows that the client expects assistance not permitted by the USPTO Rules of Professional Conduct or other law.

(b) A practitioner shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

§ 11.105 Fees.

(a) A practitioner shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the practitioner;

(3) The fee customarily charged in the locality for similar legal services;

(4) The amount involved and the results obtained;

(5) The time limitations imposed by the client or by the circumstances;

(6) The nature and length of the professional relationship with the client;

(7) The experience, reputation, and ability of the practitioner or practitioners performing the services; and

(8) Whether the fee is fixed or contingent.

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the practitioner will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by law. A contingent fee agreement shall be in a writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the practitioner in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the practitioner shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) [Reserved]

(e) A division of a fee between practitioners who are not in the same firm may be made only if:

(1) The division is in proportion to the services performed by each practitioner or each practitioner assumes joint responsibility for the representation;

(2) The client agrees to the arrangement, including the share each practitioner will receive, and the agreement is confirmed in writing; and

(3) The total fee is reasonable.